IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3630 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RP LAKHTARIA

Versus

DEPUTY SECRETARY

Appearance:

1. Special Civil Application No. 3630 of 1995

MR PRADEEP PATEL for Petitioner No. 1

Mr. H.M. Prachchhak AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 10/12/2004

ORAL JUDGEMENT

1. The petitioner, at the relevant point of time

serving as Additional Assistant Engineer, at Mota Haraniya Flood Control Scheme, at village Chotila, District Surendranagar, was chargesheeted vide charge sheet dated 24th April 1989, whereby, two charges came to be levelled against the petitioner and, thereafter, considering the reply given by the petitioner to the Authority, the Enquiry Officer submitted his report on 27th August 1993, on the basis of which, the Disciplinary Authority, respondent No.1, passed the order dated 15th February 1995, whereby punishment of stoppage of one increment for a period of two years without any future effect was imposed and the said order dated 15th February 1995 is challenged by the petitioner in the present writ petition under Article 226 of the Constitution of India.

2. It is the case of the petitioner that, when the petitioner was serving as Additional Assistant Engineer at Mota Haraniya Flood Control Scheme, during 1980-1983, for the work carried out therein, two charges came to be framed against the petitioner as per the charge sheet dated 24th April 1989.

2.1 According to charge No.1, it was found that the petitioner had shown negligence for measurement undertaken by him of earthern work and excessive payment was made for 5834-98 cubic meter earth work in II, III and IV R.A. bills, and, thus, Rs.31,687.57 ps were paid. Thus, the petitioner violated Paragraph 14.4.2 of Schedule 14 of the P.W.D. Manual, Part II, and exposed himself to violation of Rule 3 of the Gujarat Civil Service (D & A) Rules, 1971. So far as the second charge is concerned, it is alleged that when depth of pitching was 20 cms instead of 23 cms on the earth work, the payment was not made at part rate. Therefore also, the petitioner violated Paragraph 14.4.2 of Schedule 14 of the P.W.D. Manual.

2.2 According to the petitioner, the said incidence was alleged to have been occurred during the period of 1980-1983 and the charge sheet was issued after six years, i.e. on 24th April 1989. On 22nd September 1989, the petitioner submitted his reply to the charge sheet and pointed out that he was not responsible for the charges levelled against him, and, though the demand was made by the petitioner for more than once, the documents, on the basis of which, the charges were framed against him, were not supplied. It is the case of the petitioner that the work done on 29th June 1982, 7th August 1982 and 23rd September 1982 was inspected by the Executive Engineer on 16th December 1983, i.e. after one year and three months and, thereafter, the Executive Engineer

(Quality Department) submitted his report after 3.1/2 years, and specification of construction work, shrinkage to the extent of 10% was required to be calculated due to the fact that the earthern work was done without rolling, watering, etc. after passing of each monsoon season. Therefore, the Executive Engineer, Irrigation, Panchayat Division, Surendranagar, also conducted an enquiry regarding measurements and the levels of work done and it was found that no overpayment was made as per his letter dated 27th May 1983 addressed to the Superintending Engineer, Gandhinagar. All these factors were not taken into consideration by the concerned Authority before inflicting punishment upon the petitioner. According to the petitioner, the findings of the Enquiry Officer were based on no evidence and the same were believed by the Disciplinary Authority without giving any specific reasons and, therefore, the impugned order of punishment dated 15th February 1995 is a case of non-application of mind, without there being any evidence against the petitioner, and violative of the Rules and Regulations and principles of natural justice.

3. Learned advocate, Mr. Pradeep Patel, appearing for the petitioner has, vehemently, contended that the impugned order dated 15th February 1995 passed by the respondent No.1 is also as a result of a joint enquiry held against the petitioner along with other co-delinquents and, it was not permissible for the Authority to hold a joint enquiry. He further submitted that issuance of charge sheet dated 24th April 1989 to the petitioner is also belated one and, after laps of about six years from the alleged incidents during the years 1980-1983, the said charge sheet was issued and, therefore, on the ground of delay also, the enquiry was vitiated and the impugned order deserves to be quashed and set aside.

3.1 Learned advocate, Mr. Pradeep Patel, appearing for the petitioner has, further, contended that it is evident from the report of the Enquiry Officer that, so far as charge No.2 is concerned, the Enquiry Officer himself has not believed the said charge as true and, with regard to charge No.1, it is observed that the petitioner has not taken adequate care with regard to excess payment made qua earthern work carried out at the relevant point of time and, therefore, it is believed by the Enquiry Officer that charge No.1 is, partially, proved. Learned advocate, Mr. Pradeep Patel, appearing for the petitioner has drawn the attention of the Court that, even for charge No.1, which is believed to have been proved partially, the Enquiry Officer has clearly

stated that no evidence was produced by the Authority even to prove the charge No.1 partially. Therefore, according to the learned advocate for the petitioner, it is a clear case of non-application of mind on the part of the Enquiry Officer in believing the charge No.1 as partially proved in the absence of any documentary evidence produced by the Authority.

3.2 Learned advocate, Mr. Pradeep Patel, appearing for the petitioner has, further, contended that the reply submitted by the delinquent in detail was also not considered and the report of the concerned Executive Engineer was also not considered by the Authority before arriving at a decision to inflict the penalty upon the petitioner. Learned advocate, Mr. Patel, has taken this Court through the reply of the petitioner to the charge sheet, wherein, it is clearly submitted by the petitioner that, so far as the measurement of earthern work is concerned, the same was taken after a period of 1.1/4 years and, in the meanwhile, due to natural factors like monsoon, etc. the Authority could have taken the correct measurement. It was stated in the reply that, with regard to subsequent filling also, the period of more than 3.1/2 years has elapsed and, therefore, 10% of shrinkage is required to be taken into consideration since the earthern work was done without rolling, watering, etc. and the monsoon has passed. It was, therefore, submitted that the petitioner had not shown any negligence in performance of his duties and, therefore, he was not responsible for the charges levelled in the charge sheet. In any case, according to the learned advocate Mr. Patel, the charge No.2 was not proved and no irregularity was found in pitching work by the petitioner, whereas the charge No.1, which was partially proved as believed by the Enquiry Officer, is also on the basis of no evidence and since the Enquiry Officer himself has stated in his finding that no relevant evidence is produced by the Authority to prove the charges.

3.3 Learned advocate, Mr. Pradeep Patel, appearing for the petitioner, has invited my attention to the impugned order dated 15th February 1995, where, no discussion was made by the Disciplinary Authority and, without giving any reasons, the finding of the Enquiry Officer with regard to charge No.1 is believed and, therefore, it is submitted that the impugned order, being a non-speaking order and suffering from the vice of non-application of mind, is arbitrary, unreasonable and violative of Article 14 of the Constitution of India and deserves to be quashed and set aside.

3.4 Learned advocate, Mr. Pradeep Patel, appearing for the petitioner, has relied upon the following decisions,

(i) 1995 (1) SLR p.31: Committee of Management, Kisan Degree College vs. Shambhu Saran Pandey and others;

(ii) 1997 (2) SLR p.270: Chandrakant Chunilal Vyas vs. State of Gujarat

(iii) 1980 Labour & Industrial Case p.89: Mohanbhai Dungarbhai Parmar vs. Y.B. Zala and another

in support of his contention that copies of the documents relied upon in support of the charges, must be supplied to the delinquent or, if the documents are voluminous and copies cannot be supplied, then the delinquent be given an opportunity to inspect the documents. Failure to do so would violate the principles of natural justice. With regard to belated enquiry, the learned advocate, Mr. Pradeep Patel, has relied upon the judgment of this Court in the case of Mohanbhai Dungarbhai Parmar vs. Y.B. Zala and another, reported in 1980 Labour & Industrial Case p.89. The ratio laid down in the case of Chandrakant Chunilal Vyas vs. State of Gujarat, reported in 1997 (2) SLR p.270 was pressed into service in support of the contention that, even while agreeing with the findings of the Enquiry Officer, the order of punishment must be based on reasons and failure to give reasons amounts to non-application of mind, and the impugned order stands vitiated.

4. Learned Assistant Government Pleader, Mr. Prachchhak, has mainly relied upon the affidavit-in-reply filed by the Under Secretary, on behalf of the respondent No.1, and has submitted that it is not for the Court to decide about the propriety of the order of punishment passed by the Disciplinary Authority based on the findings of the Enquiry Officer, and, particularly, when charge No.1 was partially proved, it was not open for the Court to interfere with the finding of the Enquiry Officer, as confirmed by the Disciplinary Authority. According to learned Assistant Government Pleader, Mr. Prachchhak, the allegation was with regard to irregularities of taking false measurement and over-payment and there were other co-delinquents also and, therefore, a joint enquiry was initiated. He has, further, submitted that the recommendations have been made by the independent authority, and there was common subject matter in the cases of all the co-delinquents, the joint enquiry was initiated.

4.1 Learned Assistant Government Pleader, Mr.Prachchhak, has relied upon the following decisions:

(i) 20(1) GLR p.109: H.P. Thakore vs. State of Gujarat; and

(ii) 2003 (4) SCC p.753; Kanta Devi (Smt) vs. Union of India and another;

in support of his arguments with regard to propriety of guilty and proven misconduct. He has submitted that, as per the decision of the Apex Court, there is no scope for interference in the impugned order by this Court in exercise of its powers under Article 226 of the Constitution of India. It is, therefore, submitted that the order dated 15th February 1995 is just and proper, and does not require any interference by this Court.

5. I have considered the rival submissions made by the learned advocates for both the parties. I have also gone through the documentary evidence produced on record.

6. It is borne out from the record itself that, so far as charge No.2 is concerned, it is not proved and the observations of the Enquiry Officer are to the effect that no irregularity is committed and, therefore, only question, which is required to be decided, is as to whether charge No.1, which is partially proved according to the Enquiry Officer and as believed by the Disciplinary Authority, is proved in accordance with the Rules, Regulations and in consonance with the principles of natural justice or not. In other words, whether charge No.1 is based on the evidence on record or not, and whether there is proper application of mind by the Disciplinary Authority with regard to the reply submitted by the petitioner to the charge sheet, or not.

6.1 As submitted by the learned advocate for the petitioner, the findings recorded by the Enquiry Officer qua charge No.1 clearly show that no evidence is adduced by the Authority, yet, the Enquiry Officer came to the conclusion that the petitioner had not taken proper care with regard to the excess payment made to the party for the earthern work. There is no discussion with regard to the role played by the petitioner as to how he was negligent in performing his duties and, on the contrary, the Enquiry Officer himself has stated that no evidence was led before him by the Authority to prove charge No.1. Under the circumstances, it is difficult to believe that the charge No.1 stands partially proved in the absence of any evidence. The delinquent has, specifically, submitted, in his reply, about the nature of work and the measurements taken, and, subsequently, collection all such measurements after a period of 1.1/4 year when two

monsoon had already passed and the earthern work was done without rolling and watering, and even 10% shrinkage was also not deducted and, according to the petitioner, he was not responsible for the alleged charge. Subsequently also, the Executive Engineer had submitted a report and no illegality was found in the performance of the duty by the petitioner. Therefore, even for charge No.1, no evidence was adduced on behalf of the Presenting Officer and, therefore, the charge No.1 is a case of no evidence and there was total non-application of mind on the part of the Enquiry Officer, and acceptance of such irrelevant findings of Enquiry Officer by the Disciplinary Authority is a clear case of non-application of mind and the impugned order is vitiated to that extent.

6.2 The Disciplinary Authority, in his order dated 15.2.1995, has simply believed the findings of the Enquiry Officer and no reasons have been given nor any discussion with regard to the evidence has been made. Therefore, the case law relied upon by the learned advocate Mr. Patel, in the case of Chandrakant Chunilal Vyas vs. State of Gujarat, reported in 1997 (2) SLR p.270, is applicable to the facts of the present case. In the said judgment, it is observed by the Court that the Disciplinary Authority is duty bound to give detailed reasons for rejecting the contention of the delinquent even if the Disciplinary Authority agrees with the findings of the Enquiry Officer. The Court further held that the sentence 'after carefully considering the reply' in the order is not a substitute of giving reasons and failure to give reasons amounts to non-application of mind by the Authority and, therefore, the impugned order stands vitiated to that extent. In paragraph 10 of the said judgment, this Court has observed as under:

> "10. Power to punish is in the Disciplinary Authority. It is the Disciplinary Authority which must be satisfied that misconduct has been committed. It is a delegate's finding and not a finding of its own. Therefore, it must clearly apply its mind both to the evidence recorded by the Enquiry Officer and the finding recorded by the Enquiry Officer and come to its conclusion that the finding is not only correct or acceptable but consistent with the evidence and is based upon reliable and trustworthy evidence. This the Disciplinary Authority can do by reading the evidence and the report of the Enquiry Officer. But, if thereafter nothing else is brought to the notice of the Disciplinary Authority, its conclusion that it accepts the Enquiry Officer's report as

being correct, may have to be accepted when it proceeds to impose punishment. But between acceptance of the report of the Enquiry Officer and imposition of punishment, there is an intermediate stage constitutionally provided, namely to issue a notice to the delinquent officer to show cause why the report should not be accepted and why the proposed punishment should not be imposed. This is not just a procedural or processual stage; it is a constitutional mandate, any departure therefrom would vitiate the final order. It must be carried out in its true letter and spirit. It is the most important stage, as I would presently point out."

In the present case also, in the impugned order, after narrating the charges Nos. 1 and 2 against the petitioner, the procedure undertaken by the Enquiry Officer and the correspondence which took place between the delinquent and the Authority, it is simply stated that, "at the end of the matured discussion on the part of the Government, it is decided to inflict punishment of stoppage of one increment for a period of two years without future effect", and, no further discussion is made in the said order. Hence, in my view, the impugned order dated 15th February 1995 suffers from the vice of non-application of mind and it is an order without giving detailed reasons to accept the findings of the Enquiry Officer by the Disciplinary Authority. In the present case, the findings of the Enquiry Officer qua charge No.1 are also based on no evidence since no evidence was adduced as recorded by the Enquiry Officer himself.

7. Further, there is delay of about six years in issuance of the charge sheet dated 24th April 1989 for the alleged incidents of 1980-1983, and, it is true that, as contended by the learned advocate for the petitioner, substantial time has lapsed and it is difficult for the delinquent to prepare his defence in the absence of non-supply of relevant documents and even it is difficult for the witness to remember the correct facts, and no authority can arrive at a reasonable conclusion in respect of the charges, which have been levelled after lapse of six years. The ratio laid down by the Court in the case of Mohanbhai Dungarbhai Parmar vs. Y.B. Zala and another, reported in 1980 Lab IC p.89, is squarely applicable to the facts of the present case, where even delay in issuance of charge sheet after 1.1/2 years was considered fatal for the department. In the present case, particularly, when the joint enquiry was initiated against six delinquents delay of about six years in

issuance of charge sheet is also unreasonable coupled with the fact that, during enquiry proceedings, no documentary evidence was produced by the Authority, and the decision to inflict the penalty against the petitioner in absence of any evidence, also amounts to an arbitrary exercise of power.

8. The submission of the learned Assistant Government Pleader, Mr. Prachchhak, that the Court has virtually no scope to interfere with the finding of facts arrived at by the Enquiry Officer and particularly when the charge is proved, has no merit. In the present case, admittedly, the charge No.2 is not proved at all and, in respect of charge No.1, no evidence was adduced by the Authority as recorded by the Enquiry Officer himself. Therefore, in my view, the decision cited by the learned Assistant Government Pleader, Mr. Prachchhak, in the case of Kanta Devi (Smt) vs. Union of India and another, reported in 2003(4) SCC 753, is not at all applicable to the facts of the present case, where no interference was called for under Article 226 of the Constitution of India in the matter of disciplinary proceedings, where the charge is proved. In the present case, the charge No.1 was partially proved on the basis of no evidence produced by the Authority.

9. The decision of this Court in the case of H.P. Thakore vs. State of Gujarat, reported in 20(1) GLR 109, with regard to propriety of punishment upon the delinquent is relied upon by the learned advocates for both the parties. The learned Assistant Government Pleader, Mr. Prachchhak, has submitted that the penalty imposed upon the delinquent of stoppage of one increment for a period of two years without future effect is commensurate with guilt of the petitioner and, therefore, the Disciplinary Authority has not committed any illegality, while, learned advocate, Mr.Patel, submitted that the charge No.1, which is believed to have been proved partially by the Disciplinary Authority, is based on no evidence and, therefore, penalty inflicted upon the petitioner is absolutely unwarranted, and the Disciplinary Authority has not applied his mind to the facts and circumstances of the present case. It is submitted by learned advocate, Mr.Patel, that, while considering the nature and magnitude of the charge, it is incumbent upon to consider the relevant facts about the alleged misconduct by the delinquent.

10. Having regard to the facts and circumstances of the present case, in my view, the charge No.1, which is believed to have been proved partially by the

Disciplinary Authority, is based on no evidence on record as admitted by the Enquiry Officer himself and, therefore, the impugned order is vitiated as per the law laid down by this Court in the case of Chandrakant Chunilal Vyas (supra) [1977(2) SLR p.270].

11. As a result of foregoing discussion, this petition is allowed. The impugned order dated 15th February 1995 is quashed and set aside. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)
(swamy)